

1 MAUREEN E. McCLAIN (State Bar No. 062050)
Email: mcclain@kmm.com
2 ALEX HERNAEZ (State Bar No. 201441)
Email: hernaez@kmm.com
3 MATTHEW P. VANDALL (State Bar No. 196962)
Email: vandall@kmm.com
4 KAUFF McCLAIN & McGUIRE LLP
One Post Street, Suite 2600
5 San Francisco, California 94104
Telephone: (415) 421-3111
6 Facsimile: (415) 421-0938

7 Attorneys for Defendants
ALTA BATES SUMMIT MEDICAL CENTER;
8 RUSSELL D. STANTEN, M.D., LEIGH I.G.
IVERSON, M.D., STEVEN A. STANTEN, M.D., and
9 WILLIAM M. ISENBERG, M.D., Ph.D.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 COYNESS L. ENNIX, JR., M.D., as an
individual and in his representative capacity
14 under Business & Professions Code Section
17200 et seq.,

15 Plaintiff,

16 v.

17 RUSSELL D. STANTEN, M.D., LEIGH I.G.
18 IVERSON, M.D., STEVEN A. STANTEN,
M.D., WILLIAM M. ISENBERG, M.D.,
19 Ph.D., ALTA BATES SUMMIT MEDICAL
CENTER and does 1 through 100,

20 Defendants.
21

CASE NO. C 07-2486 WHA

**[PROPOSED] ORDER IN
SUPPORT OF DEFENDANTS'
SPECIAL MOTION TO STRIKE**

DATE: July 5, 2007
TIME: 8:00 a.m.
DEPT: Ctrm. 9, 19th Flr.
JUDGE: Hon. William H. Alsup

COMPLAINT FILED: May 9, 2007
TRIAL DATE: No date set.

22 The hearing on Defendants' special motion to strike Plaintiff's complaint
23 came on for hearing on July 5, 2007 at 8:00 a.m., in Courtroom 9 of the above-entitled
24 Court, located at 450 Golden Gate Ave., 19th Floor, San Francisco, CA. Alex Hernaez,
25 Kauff, McClain & McGuire LLP, appeared as attorney for the Defendants Alta Bates
26 Summit Medical Center, Russell D. Stanten, M.D., Leigh I.G. Iverson, M.D., Steven A.
27 Stanten, M.D. and William M. Isenberg, M.D., Ph.D. G. Scott Emblidge of Moscone,
28

1 Emblidge and Quadra, LLP, appeared as attorney for Plaintiff Coyness L. Ennix, Jr.,
 2 M.D.

3 After full consideration of the parties' papers, as well as the argument of
 4 counsel, the Court finds merit to Defendants' contentions. Under the California Supreme
 5 Court's decision in *Kibler v. Northern Inyo County Local Hosp. Dist.*, 39 Cal. 4th 192, 198
 6 (2006), "a lawsuit arising out of a peer review proceeding is subject to a special motion
 7 under § 425.16 to strike the SLAPP suit." Therefore, the Court must grant the motion to
 8 strike unless the Plaintiff can demonstrated a probability of prevailing on the claim."
 9 § 425.16(b)(1).

10 Here, Plaintiff can establish no such probability. Dr. Ennix has not
 11 requested any hearing in accordance with Article VIII of the Medical Center's Bylaws and
 12 he has failed to compel a hearing by seeking § 1085 mandamus. Therefore, each of the
 13 State law claims fails under either *Westlake Comm. Hosp. v. Los Angeles Superior Ct.*
 14 (*Kaiman*), 17 Cal. 3d 465, 483-84 (1976) or *Payne v. Anaheim Memorial Medical Center,*
 15 *Inc.*, 130 Cal. App. 4th 729, 745 (2005). Alternatively, Defendants are immune from suit
 16 under either the Health Care Quality Improvement Act or California law. See 42 U.S.C.
 17 § 11111(a) & 11112(a); Cal. Civil Code § 47; Cal. Business & Professions Code § 805(j);
 18 Cal. Civil Code § 43.7; Cal. Civil Code § 43.8.

19 Therefore the Court hereby **GRANTS** Defendants' special motion to strike.
 20 Counts II, III, IV, and V of the Complaint are hereby stricken and dismissed with
 21 prejudice.

22 Defendants are hereby awarded reasonable attorneys' fees.

23 **IT IS SO ORDERED:**

24 DATED: _____

 HON. WILLIAM H. ALSUP
 United States District Court Judge

25 115989.v1
 26
 27
 28